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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/031,162

05/20/2002

Nikolai Grigorievich Lyapko

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12/22/2010

WEINER & BURT, P.C.

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HARRISVILLE, MI 48740

EXAMINER

SEVERSON, RYAN J

ART UNIT

PAPER NUMBER

3731

NOTIFICATION DATE

DELIVERY MODE

12/22/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/031,162	Applicant(s) LYAPKO, NIKOLAI GRIGORIEVICH	
	Examiner RYAN J. SEVERSON	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 September 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 25-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 25-29 are rejected under 35 U.S.C. 103(a) as being unpatentable**

over Choi (5,676,684) in view of Gabrusenok (SU 1264942) and Wybrants

(2,441,682). Choi discloses an elastic base member (15) and needles (see column 5, line 14) fixed therein, each of the needles comprising a rod member (core), a sharpened portion and a head (the portion of the needle adjacent to base member 15). Choi also discloses the various needles in the same treatment device can be different materials (see column 5, lines 28-32). Choi does not disclose the needles as being partially coated with a coating. However, Gabrusenok teaches that acupuncture needles should be partially coated with coatings of a material which is different than the needle material in order to obtain the advantage of creating electrochemical potentials (see abstract of Gabrusenok). It would have been obvious to partially coat the Choi needles with a material which is different than the material of the needles so that it too would have this advantage. Further, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Therefore, one of ordinary skill

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in the art would have recognized that choosing various materials for the needles would be obvious.

3. The combination of Choi and Gabrusenok fails to disclose the needles having enlarged head portions lying in a single plane and a flat resilient base member (19). Attention is drawn to Wybrants, who teaches elongated treatment elements (18, analogous to needles) having head portions (see figure 3) in a single plane to retain the treatment elements on the base member of the applicator and a flat base member to allow the treatment elements to all contact a flat body surface at one time. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the base member of Choi flat and resilient and to have included heads arranged in a planar fashion on the needles of Choi in the manner taught by Wybrants to help retain the needles in the base member and apply even treatment to a flat portion of the body.

Response to Arguments

4. Applicant's arguments filed 9/14/2010 have been fully considered but they are not persuasive.

5. It appears that applicant is arguing against the references individually, instead of the combination set forth above and in the previous rejection. Examiner acknowledges and agrees that no single references teaches or discloses all of the claim limitations. However, the references as a whole, when combined as set forth above, teach all of the claim limitations. Examiner directs applicants attention to the "Response to Arguments"

section in the previous office action (paragraphs 7-12) for more detail on how each of the claim limitations is met by the various references in combination.

6. In particular applicant is maintaining the position that Gabrusenok does not have a partially coated needle. However, the English abstract of that document clearly recites "The sharp pointed end (2) is covered with a layer (3) of metal which is different from the metal the rod (1) is made of...". This makes clear that it is only a portion of the needle (the sharp pointed end) that is covered, while the rest of the needle (the rod) is not covered.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

8. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to RYAN J. SEVERSON whose telephone number is (571)272-3142. The examiner can normally be reached on Monday - Friday 8:30-5:00.

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10. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ryan J Severson/
Examiner, Art Unit 3731
12/16/10

/(Jackie) Tan-Uyen T. Ho/
Supervisory Patent Examiner, Art Unit 3773